

A limited liability partnership can qualify for an "E" number as an association as long as all other requirements for an "E" number are met. See 35 ILCS 120/2-5(11) and 35 ILCS 105/3-5(4). (This is a GIL.)

April 23, 2007

Dear Xxxxx:

This letter is in response to your letter dated December 11, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. It is the Department's Exemptions section that reviews applications and makes determinations regarding whether or not an entity qualifies for an Exemption identification ("E") number. Your question is a hypothetical question regarding whether or not a limited liability partnership can qualify for an "E" number. In your letter you have stated and made inquiry as follows:

We are in receipt of your letter dated October 20, 2006 (copy enclosed) in which you indicated that the Legal Services Office would not address our Private Letter Ruling request for a sales tax E-number. On behalf of our client, ABC, we have revised our Private Letter Ruling ('ruling') request to make clear that ABC is not requesting a ruling stating whether it is entitled to the exemptions provided by 35 ILCS 120/2-5(11) and 35 ILCS 105/3-5(4). Nor is ABC requesting a ruling stating whether it qualifies for an Illinois E-Certificate number. We understand that the Department of Revenue's ('Department's') Exemption Unit is responsible for such determinations. Rather, ABC is requesting a ruling that the limited liability partnership described in the statement of facts section below (hereinafter, 'LLP') is a type of legal entity that qualifies as a 'corporation, society, association, foundation, or institution' as those terms are used in 35 ILCS 120/2-5(11) and 35 ILCS 105/3-5(4). During our informal discussions with Ms. Martha Mote, we were informed that a ruling could be given on this limited issue. Ms. Mote indicated that she presented and discussed this matter first internally within the Legal Services Office, before providing us with guidance. We understand that Ms. Mote's helpful guidance is not binding on the Legal Services Office.

To the best of our knowledge, the Department has not previously ruled on this issue or on a similar issue for the taxpayer or a predecessor. Nor has the same issue or a similar issue been previously submitted to the Department and withdrawn prior to the issuance of a letter ruling. Neither an audit nor litigation related to these matters is pending with the Department.

In order to facilitate your review of the information necessary to respond to the requested ruling, we have presented the request in the following manner:

- I. Statement of Facts
- II. Ruling Requested
- III. Statement of Supporting Authorities
- IV. Summary and Conclusion

I. STATEMENT OF FACTS

This section has been prepared for the purposes of providing background, further identifying the taxpayer, and describing LLP, which is the subject of this request for a PLR.

ABC is planning to convert to an Illinois limited liability partnership (via a merger into a newly created LLP) with no change in its operations or ownership structure (in that it will continue to be 100% owned and controlled by XYZ and/or affiliates of XYZ). Hereinafter, LLP will be presented as if the merger has already occurred.

LLP operates a physician practice with numerous locations throughout the suburban area of a city in Illinois, the purpose of which is to provide charitable health care services to individuals in the community. LLP will have XYZ and GHI, which are exempt from federal income taxation pursuant to section 501(a) of the Internal Revenue Code ('IRC') by reason of being charitable organizations described in IRC section 501(c)(3), as its partners. LLP is treated as a partnership for federal income tax purposes, and its activities are reported on the federal tax filings (Forms 990) of its partners. LLP, is itself, organized and operated exclusively for charitable purposes, consistent with the charitable missions of its owners/partners. LLP's Operating Agreement specifically provides that it has the following purposes:

The Company is organized for the public benefit and shall therefore be organized and operated exclusively for the following purposes as may qualify it for exemption from Federal income tax under Section 501(c)(3) of the Code and the Treasury Regulations promulgated thereunder ('Regulations'):

- (a) One of the purposes of the Company is to make contributions to any organization that has qualified for exemption from Federal income tax under the provisions of Section 501(c)(3) of the Code and as then qualify the contributions to such organizations as deductible under Section 170(c)(2), Section 2055(a)(2), Section 2522 and Section 2106(a) of the Code.
- (b) The Company shall be organized and operated exclusively for public charitable, religious, scientific, testing for public

safety, literary or educational purposes as provided under Section 501(c)(3) of the Code.

II. RULING REQUESTED

LLP is an 'association' as that term is used in 35 ILCS 120/2-5(11) and 35 ILCS 105/3-5(4).

III. STATEMENT OF SUPPORTING AUTHORITIES

Based on the following authorities, the Department should determine that LLP constitutes an 'association' as contemplated by 35 ILCS 120/2-5(11); 35 ILCS 105/3-5(4).

The Illinois statutes relating to sales and use tax do not provide a definition for 'partnership,' nor do they provide a definition for 'corporation,' 'society,' 'association,' 'foundation' or 'institution.' As such, it is necessary to look to the common usage of such terms in determining whether an LLP is the type of entity contemplated in the statute as an 'association.'

A 'limited liability partnership' is generally defined as a partnership in which the partnership as an entity is liable for debts and obligations and the partners are not liable personally.¹ A 'partnership' is defined as the state of having shared interests or efforts. A synonym for 'partnership' is the term 'association.'² The term 'association' is defined similarly as 'a group of people formally joined together for some common interest' including 'partnership' as a related word.³

Although the Illinois legislature did not specifically include the term 'partnership' in the Retailers' Occupation (Sales) and Use Tax Act, specifically within code sections 35 ILCS 120/2-5(11); 35 ILCS 105/3-5(4), it is respectfully submitted that such an organization is meant to be included within the scope of the broader terminology 'association.' The legislature used broad, undefined terminology in the act, allowing for such an interpretation. Although this particular issue has not been specifically addressed, we believe that the Department should give this term its usual and customary meaning as provided in the Merriam-Webster Dictionary.

Accordingly, LLP should constitute an 'association' as the term is used in 35 ILCS 120/2-5(11) and 35 ILCS 105/3-5(4).

IV. SUMMARY AND CONCLUSION

We respectfully request that the Department determine and issue a PLR that LLP, a limited liability partnership, as a legal entity, constitutes an 'association' as the term is used in 35 ILCS 120/2-5(11) and 35 ILCS 105/3-5(4).

We respectfully request confirmation of this conclusion in a private letter ruling. The undersigned is not aware of any authority contrary to this conclusion.

Please contact NAME if you have any questions concerning this matter, or if for any reason you tentatively determine that the requested ruling cannot be issued in whole or in part.

DEPARTMENT'S RESPONSE

The sales tax acts at 35 ILCS 120/2-5(11) and 35 ILCS 105/3-5(4) provide that sales/use of the following tangible personal property are/is exempt from the tax imposed:

Personal property purchased by a governmental body, by a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes, or by a not-for-profit corporation, society, association, foundation, institution, or organization that has no compensated officers or employees and that is organized and operated primarily for the recreation of persons 55 years of age or older. A limited liability company may qualify for the exemption under this paragraph only if the limited liability company is organized and operated exclusively for educational purposes. On and after July 1, 1987, however, no entity otherwise eligible for this exemption shall make tax-free purchases unless it has an active exemption identification number issued by the Department.

As you have noted, limited liability partnerships ("LLPs") are not listed among the entities eligible for an "E" number. Your question is whether or not an LLP could be considered an "association," and as such be eligible for an "E" number.

We agree, in discussion with the Exemption section, that an LLP could qualify for an "E" number as an association. The LLP would have to apply for an "E" number just like any other entity. 86 Ill. Adm. Code 130.2007(b) sets forth the requirements for applying for an "E" number. Once the Exemption section receives the application, it will determine whether or not the LLP qualifies. This means that while the LLP may or may not qualify for an "E" number, it would not be automatically excluded because of being an LLP.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk

¹ See Merriam-Webster Online Dictionary; '[limited liability partnership](#)'.

² *Id.* at 'partnership.'

³ *Id.* at 'association.'